

1 supervision and direction?

2 A. Yes, it was.

3 Q. Are the contents of that testimony true and
4 correct, to the best of your knowledge and
5 belief?

6 A. Yes, they are.

7 Q. If I were to ask you the questions that appear
8 therein, would your answers here today under
9 oath be the same as appear therein?

10 A. Yes, they would.

11 MR. ROLAND: Your Honor, I ask
12 that the prefiled testimony of David A. Fitts be
13 moved into the record as if given orally today.

14 MS. LEE: Thank you. The
15 prefiled testimony will be admitted into the
16 record as if given orally. My understanding is
17 there is no questioning of this witness; is that
18 correct?

19 Seeing no interest in
20 cross-examination, the witness is excused.
21 Thank you very much.

22 MR. FITTS: Thank you.

23 (The prefiled testimony of David
24 A. Fitts follows:)

25 MS. LEE: Mr. Davis, for Z-Tel.

1 DONALD C. DAVIS

2 called as a witness on behalf of Z-Tel
3 Communications, Inc., having been first duly
4 sworn, was examined and testified as follows:

5 DIRECT EXAMINATION BY MR. HAZZARD:

6 Q. Good morning. Will you please state your NAME
7 for the record.

8 A. Donald C. Davis.

9 Q. Are you the same Donald C. Davis that submitted
10 a statement of Donald C. Davis on behalf of the
11 Z-Telecommunications Inc. in support of the
12 Joint Proposal?

13 A. Yes, I am.

14 Q. Did you prepare or have prepared under your
15 supervision the statement before you?

16 A. Yes.

17 Q. Does that statement consist of 11 pages of
18 question and answer?

19 A. Yes, it does, along with a nine-page appendix.

20 Q. Is that nine-page appendix entitled, "An
21 Empirical Exploration of the Unbundled Local
22 Switching Restriction?"

23 A. Yes, it is.

24 Q. Was that also prepared under your supervision?

25 A. It was prepared under my direction, yes.

1 Q. Do you have any corrections to your statement or
2 to the attachment?

3 A. No, I do not.

4 Q. If I asked you those same questions in your
5 statement, would your answers be the same today?

6 A. Yes, they would.

7 MR. HAZZARD: Your Honor, I wish
8 to move the statement on into the record as if
9 given orally.

10 MS. LEE: The 11 pages of
11 testimony is admitted into the record as if
12 offered orally, and the appendix which is a
13 nine-page appendix which is entitled "An
14 Empirical Exploration of the Unbundled Local
15 Switching Restriction, Z-Tel Public Policy
16 Number 3," will be marked for identification as
17 Exhibit Number 13.

18 MR. HAZZARD: Thank you.

19 MS. LEE: I understand there's no
20 questioning of this witness; is that correct?

21 Seeing no interest in
22 cross-examination, the witness is excused.
23 Thank you, very much.

24 (The prefiled testimony of Donald
25 C. Davis follows:)

1 MS. LEE: I believe the final
2 piece of testimony that is to be admitted into
3 the record is to be from Choice One.

4 TRUDI J. RENWICK
5 called as a witness on behalf of the Public
6 Utility Law Project, having been first duly
7 sworn, was examined and testified as follows:

8 BY MR. WILES:

9 Q. Good morning. State your name for the record.

10 A. Trudi J. Renwick.

11 Q. And Dr. Renwick, did you prepare a 13-page -- 13
12 pages of testimony for the proceeding today?

13 A. I did.

14 Q. And are you looking at a copy of the testimony
15 prepared?

16 A. Yes.

17 Q. And if I asked you those questions today, would
18 you provide the same answers orally as you have
19 provided in that document?

20 A. I would.

21 Q. Attached to that document, is there another
22 document which is identified as Pulp 1, which is
23 an exhibit?

24 A. Yes.

25 Q. And is that a true and accurate copy of your

1 curriculum vitae?

2 A. Yes.

3 MR. WILES: Your Honor, I move
4 the admission of the testimony into the record
5 as if orally given today, and I'd ask you to
6 mark the exhibit Pulp Number 1 as Exhibit Number
7 for identification, Exhibit Number 14, and the
8 witness is available for cross-examination.

9 MS. LEE: The prefiled testimony
10 would be admitted into the record as if given
11 orally, and Pulp Number 1, the description of
12 Trudi Renwick's, appears to be a three-page bio'
13 will be marked for identification as Exhibit
14 Number 14.

15 MR. WILES: Offering a copy of
16 the testimony to the reporter.

17 MS. LEE: Thank you very much.

18 My understanding is no one wishes
19 to cross-examine this witness here, is that
20 correct?

21 Seeing no interest in
22 cross-examination, the witness is excused.
23 Thank you very much.

24 (The prefiled testimony of Trudi
25 J. Renwick follows:)

1 MR. WILES: Your Honor, in
2 addition I wanted to mark as exhibits --

3 MS. LEE: Thank you.

4 MR. WILES: I wanted to mark for
5 identification some interrogatory requests or
6 discovery requests Verizon presented to me.

7 MS. LEE: I believe it's been e-
8 mailed to the parties.

9 MR. WILES: Yes.

10 MS. LEE: Would you like me to
11 read off what you would like to be marked as an
12 exhibit?

13 MR. WILES: I think I can do it
14 because it's divided in two parts. There are
15 two exhibits now instead of one. What would be
16 Pulp Number 2, and marked for identification as
17 Exhibit 15 would be three discovery responses.
18 They would be Pulp VZ-1, Pulp VZ-3A, 3B and 3C.
19 I'm sorry. We have to provide a copy of that to
20 the reporter, copy to the bench.

21 MS. LEE: We'll mark for
22 identification as Exhibit Number 15 Verizon
23 Discovery Responses Pulp VZ-1, 3A, 3B and 3C,
24 questions and answers.

25 MR. WILES: And the second

1 exhibit would be Pulp 3, Exhibit for
2 identification Number 16, I hope. These are
3 Discovery Responses VZ-2P and VZ-4. I'm asking
4 that since these were provided with a request
5 for Verizon proprietary treatment for the
6 responses, I would ask that they be admitted and
7 limited to the proprietary record.

8 I am providing a copy of this to
9 the reporter, copy for the bench.

10 MS. LEE: Marked for
11 identification as a proprietary exhibit, marked
12 as 15-A, it's Discovery Responses, Pulp VZ-2P,
13 as in Peter, and 4, and it's marked proprietary
14 15-A. That should be included in the separate
15 record with the proprietary exhibits.

16 (The witness was excused.)

17 MR. WILES: Thank you, your
18 Honor.

19 MS. LEE: Is there anything
20 further that is needed at this time?

21 My understanding is that several
22 parties have requested opportunity to make
23 closing statements in lieu of initial briefs.
24 What I'd like to do is read off to you what my
25 understanding is of the time restraints and then

1 suggest we take about a 15-minute break, but
2 then go straight into the closing statements if
3 that's acceptable to all the parties. My
4 understanding, Pulp has asked for 15 minutes;
5 AT&T has asked for 15 minutes; WorldCom has
6 asked for five to ten minutes. Focal and other
7 parties, I assume represented by one lawyer, has
8 requested 15 minutes. Z-Tel has asked for five
9 minutes. Verizon has asked for 10 to 15 minutes
10 and staff has asked for 10 to 15 minutes.

11 Is there anyone else wanting to
12 make a closing statement?

13 MR. ROLAND: Based on some of the
14 questioning today, we would like five minutes
15 for BridgeCom.

16 MS. LEE: Five minutes, that's
17 fine.

18 MS. BURNS: Yes, your Honor. The
19 Attorney General did file comments in this case
20 but we would ask for three to four minutes to
21 make a statement.

22 MS. LEE: Thank you. The order I
23 would suggest for closing statements would be
24 starting with Pulp, then the Attorney General,
25 then AT&T, WorldCom, Focal, Z-Tel, BridgeCom,

1 Verizon, and staff. Would that be acceptable?

2 (There was no response).

3 MS. LEE: Let's take a 15-minute
4 break and reconvene at 11:15. Thank you.

5 (A short recess was taken).

6 MS. LEE: We'd like to reconvene
7 for closing statements, please. Go back on the
8 record.

9 I'd like to suggest that parties
10 making closing statements do it from where they
11 sit, if they're comfortable there, or they can
12 come to the witness table if they prefer. It
13 might be better if you do it from where you are
14 and speak clearly into the microphone, which I
15 am reminded to do.

16 Mr. Wiles, would you like to
17 proceed with Pulp?

18 MR. WILES: Yes, good. Thank
19 you. Your Honor and Madam Chairman, I'm here in
20 behalf of Pulp, the Public Utility Law Project.

21 Our issue with this settlement, I
22 think, is very well disclosed in the testimony
23 of Dr. Renwick and in the statement we made.
24 I'm going to try to summarize a few points and
25 make them for the first time we've ever done an

1 oral brief, but there are a lot of first times
2 in this case.

3 The problem that Pulp finds in
4 the settlement, the problem that we are most
5 concerned about is with respect to the Lifeline
6 program. Lifeline, as everyone knows, is a
7 telephone program for which the telephone
8 companies have federal sponsorship to a large
9 extent, but it's administered by the local phone
10 companies, and it's supported by the Public
11 Service Commission of the state as well, and
12 it's a very, very successful program in New York
13 in the aggregate, in its perspective, in
14 contrast to systems of other states. For a
15 variety of reasons which may not be particularly
16 relevant here, it has a very large and
17 substantial subscribership and in all respects,
18 on its face at least, is a good program.

19 What Pulp's concern is, and we
20 regard it as a fundamental concern, one which we
21 think is important enough to raise in a
22 proceeding such as this, is that the
23 subscription to Lifeline, the number of
24 customers who actually receive the benefits of
25 the program, has fallen over the last few years

1 from a high of about 720,000 customers to about
2 586,000, a difference of 274,000 customers,
3 273,000 households. By itself, that's a very,
4 very substantial number, but if 273,000
5 households were overcharged \$10 by Verizon for
6 some other reason -- we're not saying that these
7 customers were being overcharged -- but had that
8 happened, we'd have a very substantial problem.
9 We'd all see it as a very substantial problem
10 and we would be quick, if not immediate, in
11 developing a solution and trying to find out
12 what caused it and what we can do about it; and
13 we would be correct in responding promptly, and
14 we would be correct in trying to find a prompt
15 solution.

16 That is the magnitude of the
17 problem we have here, and that is the substance
18 of the concern, is a very, very large number of
19 customers who used to receive Lifeline service,
20 for which they got either a nine or ten dollar
21 reduction in terms of cost and charges, and for
22 all we know they don't have it now. That, said
23 in brief, I think I called it a precipitous
24 decline. It's a step change; it's a big
25 number. It's a big change, about a 37 percent

1 reduction from the high to the low, at least
2 based on the figures that I got from Verizon,
3 and it may be even more right now.

4 Another question that could be
5 asked is, well, given that they accept that this
6 is the problem, is this the place in this
7 proceeding that we can do something about this?
8 And I think that this is classically the place
9 where something can be done or should be done.
10 We have a comprehensive settlement or arguably a
11 comprehensive settlement that reaches lots of
12 retail and wholesale issues.

13 There's no opportunity for any
14 documents or parties for bringing forward issues
15 and seeking the resolution of it through this
16 case. This particular issue was not addressed
17 in the context of settlement. Settlement is
18 just a mechanism to get to the point where the
19 Commission will make its decision, and the
20 purpose of our testimony today and the statement
21 was to make sure that the record would be able
22 to support conclusive action on this point.

23 The Commission viewed the
24 settlement, as we do, as lacking an essential
25 element, an important element, and that is some

1 mechanism or method for pressing this Lifeline
2 problem.

3 The question could be asked,
4 well, even in this interim proceeding are we
5 taking this up a little quickly; are we doing it
6 a little faster than we need to in some other
7 process? The first answer to that question is
8 that all these other momentous questions are
9 being dealt with in very short time lines and
10 very short schedules and, if anything, I think
11 the Lifeline question, the enrollment problem is
12 simpler than many of the more complex problems
13 that we were negotiated in the last two weeks.

14 "Simpler" is something in being
15 able to describe it to people, simpler in being
16 able to document it, simpler in terms of being
17 able to propose reasonable solutions, and I'll
18 get to those in a moment. So I think the time
19 is -- time is of the essence. People are being
20 denied who would be getting Lifeline benefits.
21 People who are within the target group and were
22 intended to receive Lifeline benefits are not
23 getting them. I think that's what this is, just
24 shows they're not getting them every month.
25 It's about \$10 a month, and in terms of total

1 households, it's a very substantial number.

2 There is no doubt now that the
3 difference in telephone service makes a
4 difference in people's behavior, whether they
5 continue to subscribe to service. This is
6 demonstrated by or concluded by the FCC in one
7 of the reports I cite in my brief, where they
8 were able to compare as a statistical matter,
9 New York and every other state and were able to
10 draw a statistically important conclusion, with
11 statistical conclusions that the benefits
12 provided to customers make a difference in
13 whether they continue to take service.

14 So that we can say probably, we
15 can say with confidence that there are a large,
16 a substantial number of people, probably a large
17 number of people who don't have service today
18 because Lifeline is not available. I can't tell
19 you the precise number, but I can tell you that
20 we can speak with confidence that that's true
21 and for many, many hundreds, tens of thousands,
22 many hundreds of thousands, actually are paying
23 \$10 more or \$11 -- 9 or \$10 more per month for
24 local service and a program that was designed
25 several years ago that's supported by the

1 federal government through the FCC, Universal
2 Service, and by the state targeting systems for
3 that program which was intended to help these
4 people and reduce their phone charges, is not
5 reaching the people it was intended to reach.

6 So what's the solution if there
7 is one? What can I say? That a solution can be
8 or that the solution is simple and that it can
9 be dealt with by the Commission in the context
10 of this case? I think the conclusion is simple
11 because the mechanism, the problem almost
12 suggests what the solution is.

13 The problem, as Dr. Renwick's
14 testimony explains, is basically uncontradicted
15 in this record. The problem is that Lifeline
16 customers receive Lifeline benefit because
17 they're income eligible for another program,
18 some other program that's chosen, as the SEC
19 calls it an income proxy, another program that's
20 used to identify the customer who has a low
21 income -- sufficiently low income -- so that
22 they should be receiving the Lifeline telephone
23 rate, and those programs were chosen five, six
24 or more years ago, and at the time they worked
25 very well. ' They produced a large number of

1 customers, and probably very well identified the
2 people who should get entrance into the
3 program.

4 In the intervening years, those
5 programs have changed. For their own important
6 and I assume valid policy reasons, they don't
7 reach -- they didn't identify the same persons
8 that they used to identify and believe to have
9 left the program. As the testimony shows, when
10 the subscribership is down, so is the subscrib-
11 ership to several of these other programs. So
12 the people are not, however -- if the people are
13 not identified in these other programs, they are
14 not, therefore, eligible to receive Lifeline
15 benefits.

16 The solution to the problem is to
17 find, to identify, other programs which can
18 serve this function now when the previously
19 identified programs are not performing as well.
20 This is the same solution that the FCC adopted
21 when they saw that the problem with respect to
22 tribal lines existed, and I cited that problem
23 in my statement. The FCC was anticipating the
24 same problem with respect to tribal lands which
25 they have in their jurisdiction, and they did

1 what seemed to be a reasonable solution which is
2 to, first and foremost, to expand the number of
3 programs to residents of those tribal lands for
4 Lifeline service.

5 They chose three or four
6 programs, one of which we are recommending here,
7 but the other three were unique to tribal --
8 tribal lands and the Indians, the tribal land
9 Native Americans. So in that respect, the
10 concept which is to find other programs which
11 can identify this type of relation is
12 politically simple and is exactly what we're
13 recommending here, that the FCC and the PSC can
14 use.

15 The three programs that we're
16 using is, first, the Lunch Program, apparently
17 because the FCC has already recognized this in
18 the tribal lands decision as a good program to
19 accomplish this result. It's already been used
20 by the FCC; in fact, I got -- I just got a
21 Verizon bill insert where they advise the
22 people, their New York customers, how to meet
23 the requirements, but they advised me if I live
24 on tribal lands this is how I would get the
25 Lifeline service, and they included the Choice

1 One program, so it's well understood, and it's
2 easy to do.

3 The second one is the Child
4 Health Plus program, a relatively new insurance
5 program which has been developed in the last few
6 years, and there's a very substantial effort to
7 increase enrollment in that program and it's a
8 real reach-out program designed to reach out to
9 customers, to go with people in New York who are
10 not being reached by other assistance programs,
11 and so it, by definition, tends to or should
12 tend to reach a population we're trying to get
13 to here.

14 The third program, and I think
15 one actually with the strongest sort of
16 credentials for the job is the State Earned
17 Income Tax Credit Program. It clearly is
18 targeted on low income and no income working
19 poor. That's its fundamental purpose. It's
20 very easily administered. It's a state earned
21 income program piggy-backed on the federal
22 income tax program.

23 A person acquires the benefit by
24 filing an income tax return. It has the
25 additional benefit that it is outside the normal

1 social services programs, so that we're -- so
2 that customers who normally don't interact with
3 social service programs, but are still nonethe-
4 less low income, will still be reached by that
5 program, or are likely to be reached by that
6 program.

7 It seems to us, by any objective
8 measure to be as good a way to reach these
9 people as possible; in short, it would be an
10 excellent mechanism.

11 If we did this, if we did what
12 we're recommending, which is to sort of to
13 reconfirm or revise the list of programs
14 providing eligibility, what would be the impact
15 aside from the fact that it would help tens of
16 thousands or thousands of customers in terms of
17 Lifeline service. Actually, the impact on
18 Verizon should be very little because most of
19 the money that comes to provide the reduced
20 price telephone service comes from the federal
21 government. In effect by removing those
22 customers or not reaching those customerers with
23 Lifeline today, we're turning away tens of
24 millions of dollars in federal money that would
25 otherwise go to the workers and provide a

1 benefit. There is a small portion of the money
2 -- the exact proportions are laid out in the
3 interrogatories -- a small proportion comes from
4 the Targeted Assistance Fund, but as far as I
5 can tell from the materials that Verizon
6 provided to me, none of it comes from Verizon
7 directly.

8 This is not independent of impact
9 on Verizon. It's a big impact on the amount of
10 money the federal government provides to New
11 York to provide the service. Certainly a big
12 impact on the customers, that low income
13 customer that would receive the service rather
14 than the regular priced service.

15 The last point I want to make,
16 and not to gloss over it, the occurrence that
17 Lifeline addresses, I don't want to leave behind
18 the misimpression that I don't understand that
19 the -- that someone recognizes the Lifeline
20 program and, in effect, protects the Lifeline
21 customers from the residential \$2.50 price
22 increases that do occur with this settlement.
23 That's true, and it's not insignificant that it
24 does that. It makes good sense to do that. I
25 certainly would be glad to see that provision in

1 there, but the protection it provides Lifeline
2 customers, through that provision, does nothing
3 for the hundreds of thousands of Lifeline
4 customers who aren't getting Lifeline service
5 right now, the intended Lifeline customers who
6 aren't getting Lifeline service at the moment.

7 You can take that \$2.50 increase
8 and many of them can't, but rather than lose
9 their service they'll also be paying the
10 additional 9 or \$10. That's the difference
11 today between Lifeline service and residential
12 service.

13 That concludes my remarks.

14 MS. HELMER: Yes. Could I just
15 ask one question. You mentioned that the state
16 is losing, quotes, tens of millions of dollars
17 in federal monies as a result of the loss of
18 Lifeline subscribership. Can you just point to
19 me, either in your exhibits or your testimony or
20 your comments, the basis for that, please?

21 MR. WILES: I'm sure I can.

22 MS. HELMER: And a follow-up to
23 that would be is that an annual number, or is it
24 over some period and, if so, what's that period?

25 MR. WILES: In the testimony at

1 page 6, there's a question -- the question.

2 MS. HELMER: Is this in Dr.
3 Renwick's testimony?

4 MR. WILES: Right. The question
5 is how much federal support is lost when a
6 customer switches from Lifeline to non-Lifeline
7 service, and the answer is right there. We did
8 the calculation when we prepared the answer, but
9 that's the calculation. The base of the
10 calculation is the interrogatory responses where
11 Verizon confirmed the calculation of where the
12 money comes from to provide the discount. It's
13 in Verizon's -- it would be in Exhibit 14, but
14 it's Verizon's answers to the inquiries we made.

15 MS. HELMER: Thank you.

16 MR. WILES: And what was the
17 follow-up question?

18 MS. HELMER: You answered it.

19 MR. WILES: O.K. -- that's right,
20 it's annual.

21 MS. LEE: Thank you, Mr. Wiles.
22 The next closing statement will be from the
23 Attorney General.

24 MS. BURNS: Thank you, your
25 Honor. Thank you, Chairman Helmer.

1 The Attorney General's office did
2 file comments in this case on February 14th, so
3 I don't want to reiterate them here, but I did
4 want to take a few moments to just state for the
5 record our commendation to the Public Service
6 Commission for really setting the threshold
7 value that's needed if this agreement is -- if
8 the documents we've gone through will work out
9 and that is with the January 28th order setting
10 the UNE rates that the wholesale competitors
11 will have to pay. We think that really sets a
12 framework here without which we have very little
13 hope that the settlement proposal can succeed.

14 I'd also like to commend the
15 Public Service Commission staff and the
16 Administrative Law Judges Brillling, Linsider and
17 Stein, for the hard work that they've done in
18 trying to forge this proposal into something
19 that does have the possibility of being in the
20 long-term interests of the retail ratepayers and
21 of competition in the state of New York. I
22 think they've done a magnificent job, and we've
23 had a lot of concerns about this proposal, but
24 we do think that it's the best chance we have to
25 go forward and actually create a competitive

1 setting that is in the long-term best inerests
2 of ratepayers.

3 I do want to say that we did say
4 in our comments, and I wanted to stress, we
5 think there are a lot of pitfalls ahead. Our
6 key concern here is that, while there's a great
7 emphasis placed on encouraging and developing
8 competition which we heartily endorse, if, at
9 the end of the day competition doesn't flourish,
10 we will end up with the circumstances in which
11 the ratepayers on the retail side may be paying
12 too much and getting too little in the way of
13 competition and in the way of service quality.

14 We hope to avoid that result, and
15 we do urge attention in your consideration at
16 the Commission to some of the proposals and
17 concerns we have raised in our papers.

18 I will say that the Attorney
19 General's office is very encouraged by the
20 support that competitors have shown for this
21 proposal, and we think that that does maximize
22 the possibility that this could really work; and
23 finally, if it is adopted, we do pledge, as the
24 Attorney General's office, to work with the
25 Commission, with the staff and with the other

1 parties, to try to make this a reality.

2 There's been an enormous amount
3 of hard work that's gone into forging this
4 document, but in many respects, the hard work is
5 still head, hard work on the side of Verizon, on
6 the side of the competitive providers, to try to
7 make a go of this competitive document, and also
8 on the part of government, through the
9 Commission and the Attorney General, to try to
10 keep competition going, which in the long run is
11 in the best interests of ratepayers.

12 So thank you.

13 MS. LEE: Thank you very much.

14 AT&T wanted to make a closing
15 statement. Mr. Davidow?

16 MR. DAVIDOW: Yes. Thank you,
17 Judge Lee.

18 Madam Chairman, I'm pleased to
19 speak here today on behalf of AT&T in support of
20 the settlement agreement. AT&T believes that
21 the agreement, in conjunction with the
22 Commission's recent UNE rate order, is a land-
23 mark achievement and an extraordinary event.
24 With these twin decisions, New York becomes the
25 first state in the nation to achieve a stable

1 and effectively competitive local telephone
2 market.

3 We don't do this kind of oral
4 argument often, so I'd like to take the
5 opportunity to try to appreciate the
6 significance of this agreement and it helps to
7 place it in context. Here's what I think
8 history teaches.

9 Telephony is a natural monopoly,
10 and by that I mean no more than, left open only
11 to market forces, competition doesn't happen.
12 There are only two things you can do with a
13 monopoly: You can regulate it, or you can break
14 it. For more than half a century, government
15 policy was to regulate it. Then, starting in
16 the late 1960s, government officials and
17 economists began to set a different course. The
18 FCC, the Justice Department and the courts
19 undertook a systematic effort to break the Bell
20 System's natural monopoly over long distance and
21 thereby transform it into a competitive market.
22 Government ordered the Bell System to allow
23 others to interconnect with its network and to
24 permit competitors to purchase discounted retail
25 services and resell them in competition with the

1 Bell System. Ultimately, the seminal event was
2 the forced divestiture of the local companies in
3 1984 and the accompanying requirement that all
4 long distance competitors would be given equal
5 access to the local loop.

6 Still, much more work remained to
7 be done. In particular, major structural
8 alterations needed to be instituted to allow 1+
9 presubscription for all carriers, and then '800'
10 number portability. By the early 1990s, the
11 natural monopoly in long distance was
12 permanently broken and the market was
13 structurally competitive. Roughly speaking, the
14 process had taken 25 years.

15 With passage of the
16 Telecommunications Act of 1996, we began the
17 process all over again, this time working on the
18 local telephone monopoly; and again the approach
19 was the same. Use regulatory authority to
20 compel the monopolist to give away enough of its
21 natural advantages to permit new entrants to
22 enter the market, develop and grow.

23 In the long distance case, the
24 major governmental interventions originated in
25 Washington or the federal courts. In the effort

1 to restructure local markets, however, the heavy
2 lifting is being done by the states. While the
3 jurisdictional focus has changed somewhat, the
4 objective remains the same. Government must
5 counterbalance the natural monopolist's
6 structural and cost advantages by factors great
7 enough, and for long enough, to allow
8 competitors to overcome those advantages on a
9 permanent basis.

10 How should you approach the task?

11 Well, one of the best analysts in this industry
12 offered me the following formulation some years
13 ago: A commission, she explained, had to be
14 fair but it didn't have to be neutral. This is
15 a very tight but critical distinction. If you
16 want to convert a natural monopoly into a
17 structurally competitive market, you can't be
18 neutral. You have to put your regulatory finger
19 down on the competitive side of the scale again
20 and again; but you have to find a way to do it
21 fairly.

22 This Commission has understood
23 that distinction from Day One and it is for that
24 reason that New York now has more local
25 competition than anywhere else in the United

1 States or, for that matter, in the world. Again
2 and again the New York Public Service Commission
3 took the lead in developing the business rules,
4 the interconnection agreements, the operational
5 systems and the cost recovery mechanisms that
6 were fair but not neutral. These were the
7 actions necessary to unlock a natural monopoly
8 and begin to convert it into a competitive
9 market.

10 Now, only six years into the
11 process, staff and Judges Brillling and Stein
12 collaborated in a tour de force performance
13 that came out with a settlement agreement that
14 brings to a successful conclusion the first
15 major stage in opening the local telephone
16 market to competition. With the UNE cost
17 decision and this settlement, stable, effective
18 competition based on UNEs -- and principally on
19 the UNE platform -- has been achieved. That is
20 no small accomplishment.

21 In reaching this result, I cannot
22 commend staff and Judges Brillling and Stein too
23 highly. When we started these settlement
24 negotiations in early December, we were
25 nowhere. We had nothing but individual issues

1 and concerns and no way to bridge the gap. Then
2 the judges, who spent untold hours listening to
3 all of the parties, put together what they
4 called a "straw man's" proposal that began to
5 offer some coherence to the process, some way of
6 balancing the issues.

7 The judges also pressed the
8 parties to find issues in common and resolve
9 differences between conflicting positions.
10 Slowly the idea of achieving an acceptable
11 settlement began to go from the impossible to
12 merely implausible.

13 About this time, staff took over
14 the lead role. Again I cannot tell you how many
15 hours staff spent listening to the concerns of
16 various parties, clarifying positions, pressing
17 for compromise. Most importantly, however,
18 staff continued the process of transforming an
19 an inchoate collection of issues, first into an
20 approach and then into a document that addressed
21 concerns in a coherent way.

22 What is so remarkable here is not
23 that there is a settlement with such
24 unprecedented support -- although that is
25 remarkable enough in its own right -- but that